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SKYRIVER TECHNOLOGY SOLUTIONS, LLC and
INNOVATIVE INTERFACES, INC.

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 10 3305

Case No.

**COMPLAINT FOR FEDERAL AND
STATE ANTITRUST VIOLATIONS;
UNFAIR COMPETITION**

JURY TRIAL DEMANDED

SKYRIVER TECHNOLOGY
SOLUTIONS, LLC, a California limited
liability company, and INNOVATIVE
INTERFACES, INC., a California
corporation,

Plaintiff,

v.

OCLC ONLINE COMPUTER LIBRARY
CENTER, INC., an Ohio corporation,

Defendant.

Plaintiffs SkyRiver Technology Solutions, LLC and Innovative Interfaces, Inc. allege
against defendant OCLC Online Computer Library Center, Inc. as follows:

INTRODUCTION

1. Defendant OCLC Online Computer Center, Inc. ("OCLC"), a nonprofit
corporation operating as a purported member-based cooperative of libraries in the United States
and throughout the world, is unlawfully monopolizing the bibliographic data, cataloging service
and interlibrary lending markets and is attempting to monopolize the market for integrated library
systems by anticompetitive and exclusionary agreements, policies and practices.

1 2. OCLC uses its monopoly power in its dealings with the library industry to
2 preclude entry of competitors into the product markets in which it maintains its monopolies and is
3 also using its monopoly power to establish a further monopoly in another product market.

4 3. Defendant OCLC requires its member libraries to contribute all of the
5 bibliographic records of their holdings to OCLC's comprehensive bibliographic database, to
6 purchase OCLC's commercial products and services and to assist in the development of new
7 products and services through pilot programs. OCLC prohibits its member libraries from
8 transferring or sharing their own records—which they contributed to OCLC's bibliographic
9 database—for any commercial purpose and denies access to its massive database to commercial
10 firms for any commercial use, other than to provide services to libraries that OCLC approves.

11 4. Although purporting to be a nonprofit cooperative, OCLC's corporate equity in
12 2004 was \$138 million. OCLC generated revenues in excess of \$200 million annually from 2005
13 through 2008, generated tax-free profits averaging over \$17 million per year and amassed a
14 securities portfolio valued as high as \$176 million in 2007. By 2008, OCLC had corporate equity
15 in excess of \$211 million. While claiming to have a charitable purpose, only a small fraction of
16 OCLC's revenue comes from contributions, grants or membership fees. OCLC's tax-free profits
17 over the past eighteen years have been used to acquire numerous for-profit and nonprofit
18 companies in order to extend and preserve its monopolies in its bibliographic database, cataloging
19 and interlibrary lending, and to extend its monopolies to other library products and services.

20 5. This case is about defendant OCLC's exclusionary agreements, punitive pricing,
21 unlawful tying arrangements and its refusal to deal with for-profit firms in violation of the
22 antitrust laws in order to maintain its monopolies and to destroy a new entrant in the market for
23 library cataloging services in competition with OCLC. This case is also about defendant OCLC's
24 entry into the integrated library systems market and its use of its monopoly power over its
25 bibliographic database, cataloging service and worldwide interlibrary lending service to attempt
26 to monopolize the integrated library systems market through unlawful, anticompetitive conduct
27 and anticompetitive agreements that it imposes on its member libraries and its refusal to allow
28 for-profit firms to access its database for commercial purposes.

6. Plaintiffs have been injured and competition in the relevant markets has been harmed by OCLC's exclusionary and anticompetitive agreements and conduct. This action is brought to obtain relief for the injuries suffered by plaintiffs, including access to OCLC's unlawfully acquired database, and for the benefit of all libraries, their patrons and consumers by assuring that competition exists in all aspects of electronic bibliographic data compilation and library systems and services.

THE PARTIES

7. Plaintiff SkyRiver Solutions, LLC ("SkyRiver") is a California limited liability company with its principal place of business in Alameda County, California. SkyRiver entered the library cataloging service market in the fall of 2009 in the United States.

8. Plaintiff Innovative Interfaces, Inc. ("Innovative") is a California corporation founded in 1978 with its principal place of business in Alameda County, California. Innovative provides computer systems to libraries in the United States and other countries.

9. Defendant OCLC is a nonprofit Ohio corporation formed in 1967 and headquartered in Dublin, Ohio. OCLC purportedly operates as a membership cooperative. Its stated mission is "furthering access to the world's information and reducing library costs." OCLC sells access to its bibliographic database through various services, including cataloging and interlibrary lending, to academic and research libraries, and other libraries, in the United States and other countries.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1337 and 28 U.S.C. § 1331, as this action arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26. This Court has supplemental subject matter jurisdiction of the pendent state law claims under 28 U.S.C. § 1367(a).

11. Venue is proper in this judicial district under 15 U.S.C. § 22 as OCLC is found and transacts business in this district, many of the acts and omissions that give rise to the claims in this action occurred in this district, and the damages were suffered by plaintiffs in this district.

INTRADISTRICT ASSIGNMENT

12. This action is appropriate for assignment to the Oakland Division or San Francisco Division of this Court as plaintiffs do business in both counties and are headquartered in Alameda County, and OCLC is found and does business in both Alameda County and San Francisco County.

BACKGROUND

13. Since 1971, OCLC has used its nonprofit, tax-free status and stated charitable mission to induce libraries throughout the United States and many foreign countries to become members of a purported cooperative by contributing to a single database controlled by OCLC the bibliographic metadata (or records) describing their library holdings. In its digital electronic form, this metadata consists of the information traditionally found in a library's card catalog. OCLC has thus compiled a bibliographic database comprising the library holdings of more than 72,000 libraries in 171 countries. This bibliographic database is known as "WorldCat." None of the metadata in WorldCat constitutes an original work, proprietary or trade secret information of OCLC. This metadata is in the public domain or is created almost entirely by individual OCLC member libraries, not OCLC.

14. The WorldCat bibliographic database is considered by OCLC and libraries throughout the United States and worldwide to be "the world's most comprehensive bibliographic database." It is also the only comprehensive bibliographic database of the holdings of libraries in the United States. OCLC boasts over 139 million bibliographic records and total holdings (including digital items, e-books, works and languages) of over 1.4 billion as of June 30, 2009. OCLC describes this massive database as "a unique store of information [that] encompasses records in eight formats—books, serials, sound recordings, musical scores, maps, visual materials, mixed materials and computer files." Because OCLC members contribute their new bibliographic records to WorldCat and encourage other libraries to become members, OCLC's bibliographic database will continue to grow. OCLC reported that in 2009 "WorldCat grew by 30.9 million records" and libraries "used WorldCat to catalog and set holdings for 273.8 million items and arrange 10.3 million interlibrary loan transactions."

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15. Membership in the OCLC “cooperative” obligates each library not only to contribute the metadata representing its holdings to the WorldCat database, but also to purchase one or more of OCLC’s principal services or products, such as cataloging service, its national and worldwide interlibrary lending service (“ILL”) and/or other OCLC designated products and services. Membership also obligates libraries to assist OCLC in developing new products and services to compete with for-profit firms. With the exception of a public website, WorldCat.org, that gives public access to a limited view of WorldCat’s bibliographic records, OCLC allows only member libraries or other authorized users to access its full WorldCat database to catalog library materials as well as to locate and borrow library materials from other member libraries. Plaintiffs are informed and believe and based thereon allege that OCLC is not a true cooperative in that its members do not share its revenues or control its management, operations or policies. A majority of its Board of Trustees is elected by the Board itself. As such, there is no prospect of economic unity between and among OCLC and its member libraries, and there is a distinct diversity of economic interests between them. Rather than operating with transparency as a cooperative would be expected to do, OCLC charges different prices to its members for the same services and conceals those differences from its members.

16. Typically, when a new acquisition is cataloged by a library that purchases OCLC’s cataloging service, a holdings symbol or code identifying the owning library is automatically attached to the bibliographic record representing that item in the WorldCat database. If an item is not cataloged using OCLC’s cataloging service, OCLC supports an established service of batch loading the library’s holdings information into the WorldCat database for a per-record fee. Each member library’s ownership symbol and “holdings information” is stored and displayed in WorldCat. Member libraries receive various “credits” for contributing their holdings to WorldCat as determined by OCLC on an unpublished, library-by-library basis, which can be used as an offset against certain OCLC fees. OCLC places its own OCLC number on each library record uploaded into WorldCat, which also appears on the library’s computerized records of its own holdings. This OCLC number has permitted OCLC to police its members to ensure that their records are not shared with unauthorized users. OCLC also instructs its members to use this

1 number as the criterion for defining “WorldCat data,” which must be restricted from access by
2 unauthorized users, including for-profit firms.

3 17. SkyRiver is a new entrant in the cataloging service market. SkyRiver has
4 developed a smaller bibliographic database than OCLC and offers cataloging services to
5 academic and research libraries throughout the United States in competition with OCLC. Until
6 SkyRiver entered the market, OCLC had virtually no competitors in the market for cataloging
7 service. OCLC acquired its last remaining competitor in 2006.

8 18. In 2008 OCLC introduced a new product called WorldCat Local to replace locally
9 installed online library catalogs. In 2009 OCLC introduced WorldCat Local “quick start,” which
10 it describes as “the first step toward web-scale cooperative library management services.” These
11 new products are designed and intended to establish an integrated library system, which typically
12 includes all of the “backroom” functions of a library, including managing new library
13 acquisitions, local administration of cataloging, circulation, delivery of library inventory and
14 resource sharing among groups of libraries. This type of computer system for libraries is
15 commonly referred to as an integrated library system or “ILS.” In 2009, OCLC also introduced
16 WorldCat Navigator to provide resource sharing among groups of libraries. OCLC is rapidly
17 gaining market share in the ILS market by leveraging its monopoly power over its bibliographic
18 database, cataloging and ILL and other anticompetitive conduct to disadvantage and eliminate its
19 competitors.

20 19. Innovative provides integrated library systems through three principal products
21 known as Millennium, Encore and INN-Reach. Millennium provides libraries with an array of
22 ILS services to maintain a library. Encore gives a library and its patrons a public interface to
23 search and integrate much more web-based information than just the library’s local holdings.
24 INN-Reach is a consortial borrowing system that directly links multiple library systems in a
25 defined geographic area into a single real-time “union” catalog (*i.e.*, a combined library catalog
26 describing the collections of the libraries in the consortium) that provides resource sharing among
27 libraries. Innovative has numerous competitors in all markets in which it participates.
28

THE RELEVANT MARKET

20. There are three separate product or service markets at issue in the claims asserted in this case by SkyRiver. The first is the market for bibliographic data comprised of digital electronic metadata (*i.e.*, records) of the holdings of college, university and research libraries (collectively “libraries” or “academic libraries”). The second is the market for cataloging the bibliographic records of the holdings and new acquisitions of academic libraries. The third is the market for interlibrary lending between and among academic libraries to share each other’s resources. Plaintiffs are informed and believe and on that basis allege that OCLC’s share of each of these markets for academic libraries in the United States is greater than 90 percent. Although complementary, these three products or services are sold separately. A library can obtain access to the bibliographic database by purchasing a product or service that provides access. Cataloging and ILL services are functionally dependent on the database. In other words, a cataloging service and an ILL service cannot effectively operate without constant access to the bibliographic database since the information and data accessed and delivered by each of the cataloging and ILL services is derived exclusively from the information and data contained in the bibliographic database.

21. OCLC possesses, maintains and exercises monopoly power over the WorldCat database, cataloging services and inter-library lending services and has acquired and absorbed or eliminated all of its previously existing competitors in each of these markets. With the exception of SkyRiver, a new market entrant for cataloging services, there are no existing products or services that are reasonably interchangeable with, or available substitutes for, any of these three products or services. As such, OCLC has no competitors who reasonably possess the actual or potential ability to deprive OCLC of any significant amount of its monopoly market share of any one of these three products or services.

22. The unique mission and purpose of academic libraries mandates that these libraries have continuous access to a vast array of library holdings that are capable of satisfying the scholarly research needs of their individual library communities. Since OCLC is the only provider of a worldwide database and a national and worldwide inter-library lending service that

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1 is commercially available and reasonably capable of meeting the research needs of these libraries,
2 these libraries are necessarily captive customers of OCLC for its ILL. As a practical matter, these
3 libraries have been compelled to subscribe to OCLC cataloging and ILL services given the
4 absence of any reasonably available competitive products or services because these libraries
5 would otherwise be unable to accomplish their unique mission of providing their individual
6 library communities with access to a full range of scholarly materials. Not until the emergence
7 and entry of SkyRiver with a cataloging service utilizing a smaller bibliographic database have
8 these libraries had a choice of a competitive cataloging service. However, SkyRiver has only a
9 de minimus share of the market for cataloging services as a direct result of OCLC's anti-
10 competitive conduct and exercise of its monopoly power as described more fully below. These
11 libraries have no choice other than OCLC for ILL as there is no database comparable to
12 WorldCat.

13 23. To the extent there are other discrete or selective bibliographic databases available,
14 none is a substitute or an alternative to WorldCat because academic libraries require access to a
15 single electronic means of deriving the metadata that has the necessary interfaces to provide full
16 integration of the various library's holdings and provide for borrowing or lending to other
17 libraries throughout the United States and worldwide. For example, while WorldCat.org provides
18 public access to limited bibliographic metadata, it has no technical interface to, or integration
19 with an individual library's system to allow meaningful use of the data for cataloging or
20 interlibrary lending.

21 24. No other bibliographic database duplicates or is an effective substitute for OCLC's
22 WorldCat database because its member libraries have been prohibited from sharing the
23 bibliographic data of their respective holdings to any commercial firm or for any commercial use.
24 Similarly, and for the same reasons, there is no duplicate interlibrary lending service or any
25 effective substitute for OCLC's ILL service because access to the WorldCat database is essential
26 to a competitive ILL service. In addition, regional resource sharing or interlibrary lending among
27 libraries in a specific geographical area is not a substitute or alternative for OCLC's ILL service,
28 which facilitates borrowing and lending of library materials nationally and worldwide. Those

1 libraries that participate in regional interlibrary lending through their ILS providers nonetheless
2 require and therefore purchase ILL services from OCLC.

3 25. OCLC has illegally acquired and is maintaining a monopoly in each of these three
4 markets by the anticompetitive conduct alleged below, including prohibiting member libraries
5 from sharing their holdings with commercial firms, coercing its members to purchase OCLC's
6 cataloging service by threats and punitive pricing of its ILL service for those who do not purchase
7 its cataloging service.

8 26. There are high barriers to entry into the bibliographic data, cataloging and
9 interlibrary lending markets. Over a period of almost 40 years with a tax-free subsidy and at
10 great expense to each of its participating member libraries, OCLC has compiled its "unique"
11 database, which cannot reasonably or practicably be duplicated and which has resulted in
12 entrenched buyer preference. OCLC is maintaining a monopoly in each of these markets by
13 (a) exclusive and exclusionary agreements, rules and terms of use with libraries as a condition of
14 membership, (b) requiring or coercing its member libraries to use its cataloging service in order to
15 have access to its massive database and the holdings of other member libraries, (c) using its
16 monopoly power in one product or service market to coerce libraries not to deal with competitors
17 in another product or service market, (d) using tax-free profits to acquire competitors, and
18 (e) denying commercial access to its database, which is essential to effective and efficient
19 competition, by refusing to deal with for-profit firms.

20 27. The relevant product or service market at issue in the claims asserted by
21 Innovative is integrated library systems (ILS), which provide fully integrated back-office
22 functionality (the operations of a library), an integrated public view catalog for finding the books
23 and other materials that libraries hold and interlibrary lending on a regional basis for consortia of
24 libraries located in defined geographic areas. While there are numerous competitors in the ILS
25 market, OCLC has been gaining market share at a rapid rate since it entered this market in
26 2008-2009 by means of its anticompetitive conduct.

27 28. OCLC is using its monopoly power over its WorldCat database, cataloging service
28 and ILL service in an attempt to monopolize the market for integrated library systems. There is a

1 dangerous probability that OCLC will actually obtain an illegal monopoly in the ILS market
 2 because private vendors such as Innovative do not have access to the WorldCat database, and
 3 OCLC's ILS products are centered on providing direct, integrated access to its WorldCat
 4 database, its cataloging service and its interlibrary lending service in a bundled mode while
 5 denying such access to for-profit firms.

6 29. OCLC has the market power to dictate the terms and conditions of its
 7 anticompetitive tying or bundling arrangements, the market power to intimidate and coerce its
 8 members to participate in unlawful refusals to deal, the market power to intimidate and coerce its
 9 members not to switch to SkyRiver's cataloging service, and the market power to leverage its
 10 database, cataloging and interlibrary lending monopolies so that OCLC can expand its monopoly
 11 power into the integrated library systems market. OCLC's three monopolies—bibliographic data,
 12 cataloging and ILL—are mutually reinforcing and give OCLC an arsenal of tools to punish
 13 customers and harm competition.

14 30. The relevant geographic market for each of the four product markets at issue—
 15 bibliographic data, cataloging service, inter-library lending and integrated library systems—is the
 16 United States, because academic libraries cannot turn to suppliers of these products in other
 17 countries to meet their needs.

18 OCLC'S ANTICOMPETITIVE CONDUCT

19 31. As described below, OCLC has obtained and is using its monopoly power over its
 20 bibliographic database, cataloging and ILL services by anticompetitive exclusive and
 21 exclusionary agreements and by conduct designed to eliminate all competition in the library
 22 bibliographic data, cataloging and ILL markets. OCLC is also using its monopoly power and its
 23 tax exempt status as leverage in its attempt to extend its monopolies to include the ILS market in
 24 the United States in violation of federal and state antitrust laws.

25 Acquisition And Maintenance Of OCLC's Monopoly Over Bibliographic Metadata

26 32. To be a member in the OCLC cooperative and have access to the full WorldCat
 27 database and ILL, libraries must agree to purchase OCLC's designated services, contribute to the
 28 co-development of OCLC products or services and abide by exclusionary policies and practices.

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1 33. In order to maintain strict control over its members' access and use of the
2 WorldCat database, OCLC publishes and enforces its "Principles of Cooperation" and
3 "Guidelines for Contributions to WorldCat" (collectively, "Principles and Guidelines"). OCLC
4 has also published and enforced "Guidelines for the Use and Transfer of OCLC-Derived
5 Records" ("Use and Transfer Guidelines"). These Principles and Guidelines and Use and
6 Transfer Guidelines—which each member agrees to accept, follow and enforce—have been in
7 effect for many years and have been central to OCLC's establishment of each of its monopolies.

8 34. OCLC's Principles and Guidelines not only require member libraries to contribute
9 to OCLC all current bibliographic and holdings information which represents cataloged items in
10 their collections, but in addition member libraries are required to: create bibliographic records
11 and related data consistent with the "guidelines" adopted by OCLC; support and promote shared
12 use of records among members; limit use of OCLC records, systems and services to OCLC
13 authorized users; promote the responsible use of OCLC-derived records only by approved users;
14 and ensure that the resources of the cooperative are used only to the benefit of the cooperative. In
15 fact, these requirements are designed to protect OCLC's control over the WorldCat database.
16 OCLC warns its members that newer technologies allow a library's records to be copied from its
17 online catalog without the library's agreement and that such use puts member libraries'
18 "investment" in WorldCat "at risk."

19 35. To ensure that bibliographic records in the WorldCat database are not shared with
20 any potential competitors of OCLC, member libraries have been required to agree to comply with
21 OCLC's Use and Transfer Guidelines, which were formally promulgated by OCLC in 1987.
22 While each member library may transfer records of its own holdings without restriction to other
23 libraries, a member library may not transfer or share records of its own holdings with commercial
24 firms. A "commercial firm" is defined as any organization permitted, under applicable law, to
25 operate on a for-profit basis. The only exception to this prohibition is when a library has
26 employed and agreed to pay a commercial firm to process its records (a service that OCLC did
27 not provide until 2008) on the condition that the commercial firm has signed an individual
28 agreement with the library or signed a general agreement with OCLC for protection of the records

1 it has been employed to process. These guidelines apply to all uses and transfers of a library's
2 records except where a mutually acceptable agreement establishing broader or narrower rights is
3 made with OCLC relating to a specific product or service.

4 36. Restricting access to OCLC's bibliographic database expands and maintains
5 OCLC's monopolies. These Use and Transfer Guidelines are specifically intended to preclude
6 any entity that attempts to compete with OCLC from obtaining access to the bibliographic
7 metadata contained in the WorldCat database and to prevent competitors from having access to
8 the bibliographic metadata of all OCLC participating libraries. These policies are inconsistent
9 with OCLC's stated mission of "furthering access to the world's information" because OCLC's
10 purpose and intent is to control, not expand, access to information. Although OCLC updated the
11 language of these Use and Transfer Guidelines effective August 1, 2010, the same policies and
12 restrictions continue in effect.

13 37. To minimize the risk of a competitor or non-member accessing the WorldCat
14 database, OCLC agrees with its members to monitor and detect "unapproved use of WorldCat
15 records" and to have its designated regional service providers monitor and detect such
16 unapproved use. To further minimize the risk of unapproved use, member libraries are required,
17 and agree, to use reasonable efforts to detect such use "by using filters and other technologies
18 supplied by OCLC," and to deny non-member libraries the ability to use OCLC-derived records
19 (*i.e.*, bibliographic records obtained from the WorldCat database) for cataloging purposes unless
20 OCLC has agreed to such use. The term "record" is defined to include all bibliographic records
21 and holdings data derived from the OCLC database, which includes each member's own records.
22 OCLC's Principles and Guidelines prohibiting member libraries from sharing their own records
23 of their own holdings are designed and intended to maintain and expand OCLC's monopoly over
24 the WorldCat database and all related library services.

25 **Acquisition And Maintenance Of OCLC's Monopoly Over Cataloging Services**

26 38. OCLC's monopoly power over the WorldCat database is used as leverage to force
27 member libraries to purchase OCLC's cataloging service. Allowing for-profit competitors to
28 obtain the libraries' holdings or to access the WorldCat database would contribute to innovation

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1 and technological advancement and allow those competitors to create more competitive databases
2 and lower fee-based products and services that would benefit both the libraries and ultimately
3 their patrons—the ultimate consumer of library materials. This innovation would also further
4 OCLC’s stated mission of reducing library costs.

5 39. All other bibliographic databases that once offered cataloging services to academic
6 libraries in competition with OCLC have been eliminated or acquired by OCLC using its tax-free
7 profits. Washington Library Network (“WLN”) was acquired by OCLC in 1999. In 2006, OCLC
8 acquired the Research Libraries Group, Inc. (“RLG”), the single remaining competitor in the U.S.
9 for bibliographic data, cataloging and ILL services for academic libraries, and OCLC now has
10 monopoly control with approximately 90 percent of this market. In fact, library commentators
11 use the word “monopoly” to describe OCLC and acknowledge that it is “the only game in town”
12 for cataloging because there is no place to go “for this type of service” since OCLC “gobbled up
13 RLG.” OCLC’s restrictions on access to the WorldCat database and to the records of its member
14 libraries’ holdings are a substantial barrier to entry in the market for cataloging services.

15 40. Many libraries are interested in using SkyRiver’s competing cataloging service
16 because it provides a high quality service at a substantially lower cost than OCLC’s cataloging
17 service. OCLC is using anti-competitive means, including tying its cataloging service to its ILL
18 service, to force and intimidate members to use its cataloging service by punitive pricing or
19 selective price concessions with the intent to eliminate SkyRiver as a competitor for cataloging
20 services and to signal other potential competitors in the market for cataloging service that OCLC
21 will act to protect its monopoly.

22 **Acquisition And Maintenance Of OCLC’s Monopoly Over Interlibrary Lending**

23 41. OCLC uses its bibliographic database monopoly and its cataloging service
24 monopoly as the foundation for its interlibrary lending (ILL) monopoly. Known as WorldCat
25 Resource Sharing, OCLC’s ILL service is offered for a significant annual fee to member libraries.
26 OCLC’s ILL service is the largest and the only worldwide interlibrary lending service in the
27 world. The scope of OCLC’s ILL service is coterminous with OCLC’s bibliographic database
28 because the data inventory exchanged through ILL must first reside in a single database—the

1 WorldCat database. For an ILL participant to lend its holdings (and receive credits from OCLC
2 when its holdings are borrowed), those holdings must be loaded onto WorldCat. Because
3 libraries continue to acquire holdings, the ILL participant must also be able to upload recent
4 acquisitions to continue to be a full participant in ILL. OCLC's ILL service is *de facto* sold to
5 member libraries tied together with OCLC's cataloging service.

6 42. Plaintiffs are informed and believe and based thereon allege that OCLC had a
7 practice of allowing its member libraries that subscribed to the competing RLG cataloging service
8 prior to its acquisition by OCLC to batch load their acquisitions to WorldCat for a modest
9 per-record fee of approximately \$0.23 so that those materials would be available for interlibrary
10 lending among other academic libraries.

11 43. In reaction to SkyRiver's entry into the market for cataloging services in October
12 2009, OCLC used its monopoly power over ILL in an attempt to coerce its members to continue
13 to subscribe to OCLC's cataloging service and not use SkyRiver's cataloging services. For
14 example, Michigan State University ("MSU") library advised OCLC that it had decided to use the
15 cataloging services of SkyRiver because of the significant cost savings it offered, but would
16 continue to subscribe to ILL at the OCLC quoted annual fee of \$88,500. Academic libraries,
17 including MSU, heavily rely on OCLC's ILL service as there is no other comparable interlibrary
18 lending service available due to OCLC's monopoly over the WorldCat database and its exclusion
19 of SkyRiver and other competitors from access to that database. MSU also intended to continue
20 to contribute its new acquisitions to the OCLC database by uploading records to WorldCat at the
21 published batch-load fee as subscribers to RLG's cataloging service had previously done and as
22 many other libraries continue to do. By continuing to contribute its new acquisitions, MSU
23 would be a full participant in the ILL, making available to all ILL participants its full holdings
24 and qualifying it to receive "credits" from OCLC if its new acquisitions were borrowed by
25 another library. Not only would potential borrowing libraries and their users benefit from access
26 to MSU's holdings, MSU would maintain its stature as a fully reciprocal participant within the
27 library community.

28 44. To comply with OCLC's Principles of Cooperation, libraries contribute their new

1 acquisitions to the WorldCat database. Libraries that use OCLC's cataloging service are not
2 charged for uploading their new records. Plaintiffs are informed and believe and based thereon
3 allege that there are libraries that do not subscribe to OCLC's cataloging service and are charged
4 a standard uploading fee of \$0.23 per record to upload their new acquisitions into the WorldCat
5 database.

6 45. To continue to make its new acquisitions available to all other ILL subscribing
7 libraries, in December 2009 MSU requested a quotation from OCLC for batch-load fees
8 expecting the price to be similar to that made available to other libraries of \$0.23 per record,
9 which would have amounted to approximately \$6,000 in batch-load fees annually. OCLC
10 advised MSU in February 2010 that the fee to batch-load its records would be \$54,000 for just a
11 five-month period ending June 30, 2010, evidencing its clear intent to force MSU to use OCLC's
12 cataloging service to avoid these fees. After application of MSU's credits, the OCLC effective
13 per record price for MSU was \$2.85, or approximately twelve times the amount paid by other
14 libraries that batch load new records. This oppressive and punitive price increase was
15 deliberately set at a level that would eliminate the cost savings that MSU could obtain by using
16 SkyRiver's cataloging service and thereby all but compel MSU to continue to use OCLC's
17 cataloging service. There is no efficiency or business justification for OCLC increasing its
18 uploading fees for batch loading new records. Rather, OCLC raised the batch uploading price to
19 a punitive level in an attempt to force MSU to continue to buy OCLC's cataloging services and to
20 send a signal to all libraries not to use SkyRiver's cataloging service.

21 46. Because MSU, like many libraries, had to reduce its operating costs due to budget
22 cuts, it decided to use SkyRiver's lower cost cataloging service and to discontinue uploading any
23 new acquisitions to WorldCat. MSU advised all ILL subscribers of OCLC's quotation of an
24 OCLC batch loading charge twelve times higher than normal even though MSU was still paying
25 an annual fee of \$88,500 for the ILL service. The director of libraries at MSU apologized in a
26 memorandum to ILL users, informing them of the reason it would not be contributing new
27 acquisitions to the WorldCat database:

28 We would welcome the opportunity to start loading MSU records and holdings

1 into the OCLC database, as soon as a reasonable price structure can be proposed.
 2 Until that time, I apologize for any inconvenience caused to our ILL partners.
 3 MSU sincerely wishes to contribute its SkyRiver records to the OCLC database for
 4 utilization by other libraries and in support of ILL activities, but the suggested cost
 5 structure is prohibiting this from occurring, to the detriment of every OCLC
 6 member.

7 * * *

8 Recent history has seen computer companies attempt to coerce users into adopting
 9 their entire product line by producing merchandise that will not accommodate
 10 alternative inputs. I would like to think that a not-for-profit member driven
 11 organization [OCLC] would not attempt to employ such tactics, whether via
 12 product design or pricing structures.

13 47. OCLC's attempted coercion resulted in all ILL users being deprived of access to
 14 MSU's new acquisitions, and in the inability of MSU to receive credits to off-set some of its own
 15 borrowing costs by lending to other libraries. OCLC's price gouging is inconsistent with its
 16 stated charitable mission of "reducing library costs," and the resulting loss of records from
 17 MSU's new acquisitions is inconsistent with its mission of "furthering access to the world's
 18 information."

19 48. The library community is well aware of OCLC's punitive pricing, and one online
 20 library news service commented on OCLC's treatment of MSU: "The real work here is done by
 21 librarians, not OCLC. . . . Today, when libraries are starting to realize OCLC's core service isn't
 22 worth what it was worth in 1967, OCLC is looking to permanently lock up their central position
 23 with viral contracts and, as the MSU case makes clear, monopoly pricing and flat-out bullying."

24 49. Similarly, in the middle of California's financial crisis, California State University
 25 at Long Beach ("CSULB") library advised OCLC that it planned to switch to SkyRiver for
 26 cataloging services to reduce its costs but would continue to subscribe to the ILL service. It
 27 requested confirmation of a \$0.23 per record batch-load fee to upload its new records to the
 28 OCLC WorldCat database. Like MSU, CSULB subscribes to OCLC's ILL service at a cost of
 approximately \$75,000 annually because there is no other interlibrary lending service available
 due to OCLC's monopoly over the WorldCat database. While awaiting OCLC's response, in
 February 2010 CSULB's library director in a memorandum to all ILL subscribers explained to
 member libraries and ILL partners that "if . . . the cost of contributing a record to the OCLC

1 union catalog is being increased twelvefold and that this charge appears to be imposed selectively
2 and punitively, we will not contribute current and future records to the database.”

3 50. The same coercive effective charge of \$2.85 per record was quoted by OCLC, and
4 CSULB discontinued contributing its new acquisitions to the OCLC database. As a result,
5 CSULB does not upload new records and other libraries do not have the benefit of CSULB’s new
6 records for borrowing, and CSULB does not have the benefit of reducing its ILL fees through
7 lending its new holdings to other libraries. Again, OCLC’s actions are inconsistent with both
8 aspects of OCLC’s stated mission and are intended to prevent libraries from using the lower cost
9 cataloging service offered by SkyRiver in order to eliminate SkyRiver as a competitor.

10 51. By attempting to coerce MSU and CSULB with “monopoly pricing and flat-out
11 bullying” not to use SkyRiver, OCLC has succeeded in intimidating other libraries from using
12 SkyRiver. Several other academic libraries in the United States have advised SkyRiver that they
13 would prefer to use SkyRiver’s cataloging service for the substantial cost savings and quality of
14 the service. However, given OCLC’s retaliation against MSU and CSULB for changing to
15 SkyRiver’s service, they are afraid to use SkyRiver because they could not bear the twelvefold
16 increase in cost that OCLC would charge for uploading their new acquisitions for ILL use.
17 Because the ILL service is essential to those libraries considering SkyRiver, those libraries have
18 effectively been coerced to continue subscribing to OCLC’s cataloging service to avoid the higher
19 cost of contributing their new records to the WorldCat database.

20 52. Beyond the higher cost of uploading new holdings records, OCLC’s
21 anticompetitive acts cause further serious harm to libraries. The inability to be a full participant
22 in OCLC’s ILL service also precludes certain types of libraries from obtaining state and federal
23 grants and other aid or tax subsidy assistance. Many states identify one or more of its libraries as
24 its “library of last resort,” meaning that that library has the broadest access to bibliographic
25 holdings over any other library in the state. State legislatures and other philanthropic institutions
26 scrutinize the library’s access to bibliographic holdings before authorizing the funding that is
27 designed to help the library maintain its “library of last resort” status. However, maintenance of
28 this designation is typically wholly dependent upon the library’s ability to have its new

1 acquisitions available through OCLC's ILL. The risk of not being a "library of last resort"
 2 because of limited participation in OCLC's ILL has caused several libraries to inform SkyRiver
 3 that they are economically prohibited from doing business with SkyRiver because it would
 4 jeopardize their ability to obtain certain grants and other legislative subsidies. Thus, while OCLC
 5 may not literally require libraries to buy OCLC's cataloging service in order to upload new
 6 records into OCLC's ILL, its punitive pricing—and the threat of punitive pricing—constitutes
 7 tying in all practical respects.

8 53. In February 2010, after MSU and CSULB advised OCLC of their intent to switch
 9 to SkyRiver but before they had actually received a response concerning the price for uploading
 10 their new records, the Chair of the OCLC Board of Trustees wrote a letter to all OCLC member
 11 libraries in which he advised them that "some alternative [cataloging] service providers [a
 12 reference to SkyRiver] are offering OCLC members services that enable them to bypass the
 13 WorldCat cataloging service and to find cataloging records at a reduced cost." He warned
 14 member libraries that using such services "hold the potential to undo the work that libraries and
 15 the OCLC cooperative have done together over these past 40 years." He urged member libraries
 16 to read a speech (and enclosed a copy with his letter) that he gave on January 15, 2010 in which
 17 he referred to "a lite cataloging service" [a reference to SkyRiver] and questioned whether
 18 libraries that make the choice to use that cataloging service "*should have access to resource*
 19 *sharing [ILL] and other value added activities that those who are full participants enjoy . . .*
 20 *[a]nd if they do have access then at what price?"* MSU and CSULB and the rest of the library
 21 community learned "at what price"—a punitive price—leaving open the question whether such
 22 libraries should have access to OCLC's ILL service at all. OCLC's punitive price increase to
 23 MSU and CSULB, and the threats made by OCLC's Chair, also signaled to other libraries that
 24 they would suffer the same punitive uploading fees should they switch to SkyRiver's cataloging
 25 service or be denied ILL service altogether. This intimidation is a cheap means of excluding
 26 SkyRiver from the market because it costs OCLC nothing. OCLC's intentional intimidation and
 27 bullying actions have resulted in injury to SkyRiver by the loss of potential cataloging contracts
 28 with several academic libraries in the United States.

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54. OCLC has adopted an additional strategy to break the momentum of libraries changing from OCLC to SkyRiver by giving dramatic price concessions on cataloging service where reducing OCLC's fees would not materially affect OCLC's profits. Plaintiffs are informed and believe and based thereon allege that one or more smaller libraries that have indicated an interest in switching their cataloging from OCLC to SkyRiver have not done so because OCLC has offered significant discounts for cataloging that are not available to other OCLC members, with the intent of eliminating SkyRiver as a competitor. OCLC is able to do this because it does not publish its prices for cataloging or ILL services and conceals differential prices for the same service from its members.

55. OCLC's use of its monopoly power over ILL to coerce libraries who prefer to use SkyRiver's less expensive cataloging service has been recognized by many in the U.S. library community as anticompetitive and as an indication that OCLC is not interested in reducing libraries' costs but rather is interested in ensuring that it retains its monopolies over cataloging and ILL by means of its monopoly power over its member libraries' bibliographic records. A prominent library-related internet blog commented on OCLC's abuse of MSU and its impact on the library sector:

I find it astonishing that any corporation would choose to punish customers rather than to work to win them back. I also find it astonishing that OCLC is willing to keep current customers through threats and fear. Essentially, MSU is being made an example: if you move your cataloging to a competitor, we'll cut you out of OCLC services. This is a lesson for anyone else thinking of moving to SkyRiver or some other service.

OCLC's treatment of MSU and CSULB and the "lesson" it teaches has coerced numerous libraries interested in moving to SkyRiver's cataloging service to stay with OCLC in order to avoid its punitive actions.

OCLC's Bundled Products And Services And Its Entry Into The Market For Integrated Library Systems

56. OCLC has traditionally offered three principal products, some or all of which must be purchased by a library to qualify for membership and access to the OCLC WorldCat database. They are FirstSearch, which is a bundle of various services and products, a cataloging service and

1 an ILL service. OCLC does not publicly disclose pricing for any of these products or services but
 2 rather its price list states “Custom Quotes” for each. Plaintiffs are informed and believe and
 3 based thereon allege that OCLC is using differential pricing for the same products and services
 4 without disclosing those prices to its members or to the public in order to preserve its monopolies,
 5 increase its profits and eliminate the rise of any competitors.

6 57. In 2007, OCLC publicly announced its new initiative to establish an integrated
 7 library system (ILS), which it refers to as “a web-scale or cloud-based delivery system.” In June
 8 2009, a major library commentator described OCLC’s further extension into the ILS market:

9 In a move that has stirred some controversy in the library automation industry,
 10 OCLC has announced that it will extend WorldCat Local, initially positioned
 11 primarily as a discovery tool, to provide a complete suite of services for the
 12 automation of libraries. Work is now underway to create services associated with
 WorldCat Local that perform circulation, resource fulfillment, acquisitions, and
 license management. Taken together, these services will obviate the need for a
 library to operate its own integrated library system.

13 58. OCLC used and uses its membership requirements to obtain the agreement,
 14 assistance and services of libraries in developing OCLC products such as WorldCat Local, which
 15 they are also obligated to purchase, while competitors, such as Innovative, are excluded from
 16 what should be competitive procurement opportunities. OCLC’s use of libraries to assist in
 17 product development also enables OCLC to eliminate existing competitive products in those
 18 libraries. OCLC developed, and is still developing, WorldCat Local and WorldCat Local “quick
 19 start” through pilot programs in which many of its member university libraries have agreed to
 20 participate, without compensation, purportedly to meet the requirements of their membership in
 21 OCLC. These so-called pilot programs are used to avoid, or to attempt to avoid, the competitive
 22 public procurement requirements of the universities that are involved. By invoking its
 23 membership requirements, OCLC precludes for-profit competitors from having the same
 24 opportunity to develop competitive products for such university libraries. Without following
 25 competitive procurement practices and procedures, librarians in public universities committed
 26 thousands of hours and resources to the development of these OCLC commercial products,
 27 resources that are not available to for-profit library service vendors.

28 59. OCLC has used its membership requirements—and resulting pilot programs—to

1 compel at least one major university to bypass required procurement practices in order to enable
2 and accelerate OCLC's entry into, and potential domination of, the ILS market with WorldCat
3 Local and to exclude competitors from access to a fair procurement and bidding process.

4 60. Plaintiffs are informed and believe and based thereon allege that to advance its
5 interest in excluding access to competitors, OCLC has used its tax-free profits to pay personal
6 cash inducements to key university library officials and provide them with luxury trips to
7 expensive resorts to obtain their commitment to promote OCLC products and the development of
8 those products at their universities, all of which have assisted OCLC in accelerating its entry into,
9 and attempt to dominate, the ILS market.

10 61. OCLC's WorldCat Local (introduced in 2008), a web-based utility that is designed
11 to provide all of the integrated library systems that are necessary to operate a library, and
12 WorldCat Local "quick start" (introduced in 2009), a stripped down version of WorldCat Local,
13 were the result of pilot programs at major universities. WorldCat Local "quick start" has been
14 distributed for free to libraries that purchase OCLC's "FirstSearch" to induce librarians to
15 purchase WorldCat Local. A Library Journal commentator in April 2009 reported: "Since
16 around April 2007, OCLC has been engaged in pilot projects with libraries to evaluate WorldCat
17 Local as a replacement, or supplement, to local online catalogs. Some of the pilot sites include
18 the University of Washington and the Melvyl catalog for the California Digital Library that serves
19 as a comprehensive catalog for the ten library systems of the University of California." OCLC
20 describes WorldCat Local "quick start" as "a locally branded catalogue interface and a simple
21 search box that presents localized search results for print and electronic content along with the
22 ability to search the entire WorldCat database and other resources via the web." This same
23 description applies to dozens of products that have been marketed by Innovative and other for-
24 profit companies for several years—with the exception of "the ability to search the entire
25 WorldCat database" as for-profit companies have no commercial access to WorldCat. OCLC is
26 using this restricted access to its WorldCat database monopoly—effectively a refusal to deal with
27 for-profit companies—in its attempt to monopolize the ILS market.

28 62. Innovative has lost numerous contracts as a proximate result of OCLC's use of its

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1 monopoly power over the WorldCat database and its exploitation of its member libraries'
2 obligation to purchase OCLC products. While integrated library systems have historically been
3 provided by for-profit commercial firms, by June 30, 2009 OCLC boasted 360 WorldCat Local
4 installations and its intent to "add functionality for Web-scale delivery and circulation,
5 acquisitions, license management, cooperative intelligence, patron management and more
6 interoperability with interlibrary loan and ILS systems." A Library Journal commentator
7 observed that "[t]he next logical step in OCLC's strategy moves these remaining tasks
8 [circulation and acquisitions] into WorldCat Local, making it possible for a library to phase out
9 its local integrated library system." In April 2010, the Library Journal reported that by the end of
10 2009, there were 624 WorldCat Local installations, including WorldCat Local "quick start."
11 OCLC's intent to eliminate all for-profit competitors in the ILS market is clear and has been
12 acknowledged by many commentators in the library community. Because of its monopolies in
13 the bibliographic data, cataloging service and ILL service markets, there is a dangerous
14 probability that OCLC will succeed in also monopolizing the market for ILS.

15 63. WorldCat Navigator, also introduced in 2009, is a consortial borrowing system
16 that directly links multiple local library systems in a defined geographical area, providing inter-
17 library lending among a discrete number of libraries. There are for-profit companies that have
18 marketed a competitive product for several years, including Innovative through INN-Reach. The
19 development and introduction of these OCLC bundled products—plus future planned products—
20 are a major step in OCLC's attempt to monopolize all aspects of library systems and services,
21 including integrated library systems that are presently provided by for-profit competitors, by
22 eliminating competition for such services through its requirement that member libraries use
23 OCLC services and through its refusal to allow access to the WorldCat database for commercial
24 use.

25 64. OCLC also markets and sells an extensive list of other products and services to its
26 members by bundling those products and services with FirstSearch, cataloging and/or ILL
27 services. OCLC continues to restructure its bundled products around its monopoly products to
28 gain maximum competitive advantage over for-profit companies. On March 17, 2010, OCLC

1 announced a phased shift in its product lines from FirstSearch bundled services to WorldCat
2 Local bundled services. The purpose of this strategic change, as noted by one library
3 commentator, is “to compete with integrated library service (ILS) providers.” In fact, it is to use
4 and extend its bibliographic data, cataloging service and ILL service monopolies to eliminate
5 for-profit competitors and monopolize the ILS market.

6 65. Because OCLC exploits and leverages its three existing monopolies by (a) refusing
7 to allow for-profit companies to have access to the WorldCat database for commercial use,
8 (b) requiring libraries to purchase its products, (c) requiring libraries to assist in product
9 development, and (d) selective, discriminatory pricing schemes and bundling, there is a dangerous
10 probability that OCLC will also obtain a monopoly in the ILS market.

11 **OCLC’s Acquisitions In Pursuit Of Its Monopolies**

12 66. OCLC has not gained its monopoly position in these markets through superior
13 products, technological innovation or business acumen, but through its anticompetitive conduct
14 and practices, including acquisitions of for-profit and nonprofit companies.

15 67. OCLC’s worldwide expansion from a small nonprofit cooperative of universities
16 in Ohio to a global conglomerate is well-known in the library community. Since 1982, using its
17 substantial untaxed monopoly profits, OCLC has acquired nineteen companies in the library
18 industry—fourteen of which were for-profit—either to obtain software and other products that
19 enable it to offer library services in competition with the remaining for-profit providers or simply
20 to eliminate products from the marketplace. OCLC uses its monopoly over the WorldCat
21 database, cataloging and ILL services and its nonprofit status as leverage. For example, OCLC
22 acquired RLG, the last remaining academic bibliographic data, cataloging and ILL service, in
23 2006. RLG was a library consortium founded in 1974 by several prestigious university libraries.
24 Until 2006, RLG competed with OCLC.

25 68. The companies, competitors and software innovators around the globe acquired by
26 OCLC with tax-free profits, as well as four firms with whom it partnered, include the following
27 (those that were for-profit are starred):
28

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1	Apr 1982	OCLC purchased Total Library System from The Claremont Colleges in California. HP/3000 based system.
2		
3	May 1983	OCLC purchased Integrated Library System (ILS) from Lister Hill Center of National Library of Medicine.
4	Aug 1983	**OCLC acquired Avatar to assist in the development of LS/2000.
5	Feb 1987	**OCLC acquired ALIS I and I software from Data Phase, marketed under the new name of LS/2.
6		
7	Jun 1993	**OCLC acquired Information Dimensions, Inc., from Battelle Memorial Institute.
8	Oct 1997	**OCLC acquired Blackwell North America's authority control service business.
9		
10	Feb 1999	OCLC acquired Washington Library Network (WLN).
11	Dec 1999	**OCLC and PICA entered a joint ownership agreement.
12	Feb 2000	**OCLC acquired PAIS (Public Affairs Information Service).
13	Oct 2000	**OCLC acquired Canadian-based Library Technical Services.
14	Oct 2000	OCLC became the exclusive distributor for ILLiad software developed by Virginia Tech and Atlas Systems.
15	Jan 2002	**OCLC acquired NetLibrary.
16	May 2002	**OCLC entered into a partnership with Olive Software.
17	Jun 2002	**OCLC entered into a partnership with DiMeMa Inc. for CONTENTdm.
18	Aug 2004	OCLC absorbed 24/7 Reference Service from Metropolitan Cooperative Library System.
19	Jun 2005	**OCLC PICA acquired Sisis Informationssysteme.
20	Nov 2005	**OCLC PICA acquired Fretwell-Downing Informatics Group.
21	Jan 2006	**OCLC acquired assets of Openly Informatics.
22	July 2006	OCLC acquired The Research Libraries Group, Inc.
23	Aug 2006	**OCLC acquired DiMeMa, Inc.
24	July 2007	**OCLC acquired the remaining shares of OCLC PICA a library automation systems and services company headquartered in Leiden, Netherlands, to become its sole shareholder and changed its name to OCLC.
25		
26	Jan 2008	**OCLC acquired Useful Utilities, LLC (developer of EZ Proxy).
27	Sep 2008	**OCLC acquired Amlib.
28		

69. A recent summary of noteworthy 2009 developments in the ILS market chronicled OCLC's continuing expansion into library automation products through an aggressive merger and acquisitions strategy using tax-free profits. The report noted:

Nonprofit OCLC continued its buying binge of commercial library automation companies. In September 2008, it acquired Amlib, one of the major products in Australia, with implementations also in Africa, the UK, and the United States. OCLC's arsenal of library automation products acquired from commercial companies now includes Amlib, Sunrise, OLIB, LBS Local Library System, and CBS Central Library System as well as a variety of OpenURL linking, federated search, and portal products.

* * *

OCLC, a nonprofit membership-governed organization, has in recent years acquired a number of for-profit companies involved in library automation technologies. Many of these acquisitions took place through OCLC PICA, which at the time was a majority-owned subsidiary and has since been wholly acquired and folded into the global organization.

* * *

In 2008, OCLC purchased Useful Utilities whose software product, EZProxy, is a tool for authentication of remote users for access to restricted library resources. In September 2008, OCLC added to its arsenal of ILS technologies through the acquisition of Amlib, one of the major automation systems in Australia, from InfoVision Technologies.

OCLC also began work on a new consortial borrowing solution, called WorldCat Navigator, to compete with products such as URSA from SirsiDynix and INN-Reach from Innovative Interfaces. The Orbis-Cascade Alliance, a large consortium of libraries in Washington State and Oregon, partnered with OCLC to develop a new product involving WorldCat and the VDX technology for document and resource sharing gained through the acquisition of Fretwell-Downing. [The Orbis-Cascade Alliance migrated from an INN-Reach system provided by Innovative in 2008.]

OCLC offers WorldCat Local as a next-generation library interface that competes with commercial products such as Primo, Encore, and AquaBrowser.

70. Similarly, an article in June 2009 concerning OCLC's announcement regarding WorldCat Local "quick start" noted:

This Product did not come out of thin air. . . . Much of the research and development of OCLC's new automation services taps into the talent and technologies of these acquired assets

71. Significantly, many of OCLC's recent acquisitions are focused on strengthening its monopolies and eliminating competition. OCLC's acquisition program, which is funded with tax exempt profits, has enabled OCLC to eliminate for-profit competitors, strengthened its existing

monopolies and has given it the monopoly power to extend its monopoly power into the ILS market.

72. In addition to acquiring for-profit companies, OCLC also uses headhunters to identify and recruit employees from for-profit firms. Plaintiffs are informed and believe and based thereon allege that OCLC is using its tax-free dollars to recruit employees of for-profit vendors of library services to eliminate competition and extend OCLC's monopoly to the ILS market.

OCLC's Use Of Its Tax-Exempt Status To Eliminate Competition

73. Over the years, OCLC has increasingly generated significant revenue, accumulated a substantial surplus of capital, and generated increasing profits, which have been used to acquire competitors or products and eliminate competition. These profits could not have been accumulated if OCLC were truly interested in its stated nonprofit mission of "reducing library costs." An insignificant percentage of OCLC's revenues come from membership, grants or charitable contributions. OCLC is abusing its status as a tax exempt, nonprofit entity and unfairly competes with for-profit companies, such as Innovative and SkyRiver, by using its nonprofit status as leverage to monopolize the library services industry as the following numbers show:

Year	OCLC Total Revenue	OCLC Total Revenue Over Total Expenses (Tax-Free Profits)	OCLC Corporate Equity
2004	\$186,000,000	\$14,400,000	\$138,200,000
2005	196,000,000	17,200,000	157,400,000
2006	216,000,000	20,800,000	175,200,000
2007	235,000,000	19,500,000	206,400,000
2008	246,000,000	11,600,000	211,800,000
2009	240,000,000	(31,900,000)*	177,000,000

*The deficit resulted almost entirely from losses in the value of OCLC's securities portfolio.

74. With corporate equity of \$177 million as of June 30, 2009, OCLC has the means to lower prices temporarily and selectively to those libraries considering SkyRiver to eliminate SkyRiver as a competitor and to give away its WorldCat Local "quick start" service and recover any lost profits through higher prices once competition from SkyRiver is eliminated from the cataloging service market and Innovative and other for-profit competitors are eliminated from the

1 ILS market.

2
3 **The Anticompetitive Effects Of OCLC's Conduct On
Competition, Plaintiffs And Consumers**

4 75. As a result of OCLC's anticompetitive conduct described above, OCLC has
5 illegally monopolized the bibliographic data market, the cataloging service market and the ILL
6 market and is illegally attempting to monopolize the ILS market.

7 76. The WorldCat database was created largely at public expense by public and
8 nonprofit libraries, including federally funded libraries such as the Library of Congress and the
9 National Library of Agriculture, and through OCLC's tax-free profits. Library records should be
10 freely and openly available for use and re-use either in the public domain or by reasonable means
11 of access to all, including for-profit library services firms.

12 77. Advisors, trustees and governing member representatives of OCLC who at the
13 same time work for member libraries ultimately have decision-making authority on the selection
14 of the vendors for their respective library's services. By agreeing to advance the interests and
15 products of OCLC they are effectively excluding competitors.

16 78. Libraries throughout the United States and elsewhere have been dealing with the
17 compelling need to reduce their expenses, and SkyRiver presents an opportunity to achieve
18 substantial cost savings in cataloging. Both libraries and their patrons/consumers would benefit
19 from competition and innovation in library services at all levels, which can only be achieved by
20 enforcement of the antitrust laws. In addition, MSU and CSULB, both public institutions, and
21 other academic libraries and their patrons have been harmed. The new library material
22 acquisitions of MSU and CSULB are not available for inter-library lending, and the cost of
23 cataloging and interlibrary lending remains at a monopoly pricing level. OCLC has harmed the
24 public, library users and seekers of information generally by excluding competition and
25 discouraging market entry and innovation in the bibliographic data, cataloging, ILL and
26 integrated library systems markets.

FIRST CLAIM FOR RELIEF**(Violation of Section 2 of the Sherman Act for Monopolization)**

79. Plaintiff SkyRiver incorporates by this reference each and every allegation of paragraphs 1-78 above.

80. Defendant OCLC has monopoly power in the bibliographic data market, the cataloging service market and the ILL market. OCLC is using its monopoly power over the WorldCat database and ILL as leverage to force libraries to purchase its cataloging service. OCLC is also using its monopoly power in cataloging through selective price increases and selective price cuts to maintain its cataloging monopoly.

81. SkyRiver is informed and believes and based thereon alleges that defendant OCLC acquired and is willfully maintaining and abusing its monopoly power in the bibliographic data, cataloging and ILL markets as described herein by, among other things: requiring its member libraries to agree to deal exclusively or predominantly with OCLC; requiring members to assist OCLC to develop new products to the exclusion of competitors; aggressive acquisitions; effectively using the WorldCat database and ILL service as leverage to sell its cataloging service and unreasonably denying access to the bibliographic metadata of WorldCat and its member libraries to SkyRiver and other potential competitors for commercial use. OCLC's three monopolies are mutually reinforcing and give it an arsenal of tools to punish customers and harm competitors. OCLC has acted intentionally and illegally to obtain and maintain its monopoly power by anticompetitive and unreasonably exclusionary conduct, coercion and intimidation, and its anticompetitive and unreasonably exclusionary conduct has enabled it to do so.

82. Defendant OCLC has acquired bibliographic records from 72,000 libraries over the past 40 years through public resources, including public and other nonprofit libraries. During that period, OCLC required that its members neither share nor allow use of their records by for-profit firms for commercial purposes and intentionally created barriers to entry into the bibliographic data, cataloging and ILL markets. OCLC is now using its monopoly power over its WorldCat database and its ILL service as well as its nonprofit status as leverage to destroy competition in the cataloging service market.

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83. Defendant OCLC is using its monopoly power over its WorldCat database and ILL to sell its products and services and to exclude its competitors. While SkyRiver was able to assemble a catalog to compete with OCLC, OCLC's response was to increase its prices for record uploading for ILL subscribers and selectively cut prices for cataloging services to only select customers to harm and exclude SkyRiver from the market.

84. The WorldCat comprehensive bibliographic database is an essential facility for cataloging, for providing national and worldwide interlibrary lending among libraries and for providing other competitive library services that require a broad bibliographic database. Without access to the WorldCat database, potential competitors with innovative ideas and technologies will not develop or try to enter the library cataloging, ILL or ILS markets to the detriment of the public, libraries and consumers.

85. A not insubstantial amount of interstate commerce in the bibliographic data market, cataloging service market and ILL service market has been—and continues to be—affected by OCLC's illegal conduct, and OCLC's conduct has harmed libraries, their customers and consumers and has harmed competition.

86. As a result of OCLC's violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, SkyRiver has been injured and continues to be injured in its business and property in an amount to be determined at trial, which amount is to be trebled in accordance with 15 U.S.C. § 15.

87. As a result of OCLC's violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, SkyRiver has suffered and will continue to suffer irreparable harm unless OCLC is restrained and enjoined by this Court from continuing its wrongful actions intended to destroy SkyRiver's business reputation and goodwill and unless this Court orders defendant OCLC to provide access to the WorldCat database to SkyRiver and other potential competitors, on such terms as are just and reasonable.

SECOND CLAIM FOR RELIEF

(Violation of Section 2 of the Sherman Act for Attempted Monopolization)

88. Plaintiff Innovative incorporates by this reference each and every allegation of paragraphs 1-78 above.

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89. Defendant OCLC has monopoly power in the bibliographic data market, the cataloging service market and the ILL market. Defendant OCLC is using its monopoly power over the WorldCat database, its cataloging service and its ILL service as leverage to extend its monopoly to the ILS market by denying access to the WorldCat database to for-profit firms and by offering certain of its ILS products and services for free.

90. Innovative is informed and believes and based thereon alleges that defendant OCLC acquired and is willfully maintaining and abusing its monopoly power in the bibliographic data, cataloging and ILL markets as described herein by, among other things, requiring its member libraries to agree to deal exclusively or predominantly with OCLC. OCLC is unlawfully using its leverage in these monopolies in an attempt to monopolize the market for ILS by: offering WorldCat Local "quick start" and WorldCat Local for free; requiring members to assist its development of products and services while excluding competitors; unfairly using such assistance to sell WorldCat Local to members of the OCLC cooperative and denying access to the WorldCat database to Innovative and other ILS vendors.

91. Defendant OCLC is using its monopoly over its WorldCat database to sell its other products and services, such as WorldCat Local, and to exclude and eliminate its competitors in the ILS market by denying them access to the WorldCat database for commercial use. The WorldCat database is an essential facility for providing competitive ILS because without access to the WorldCat database, Innovative and other potential competitors cannot effectively compete with OCLC's WorldCat Local and other products and services offered by OCLC that depend on its WorldCat database monopoly. As a result, Innovative and other providers of ILS services and products and potential competitors with innovative ideas and technologies will not develop or try to enter the ILS market, all to the detriment of the public, libraries and consumers.

92. Using the leverage of the WorldCat database and its member libraries' obligation to purchase OCLC's products and services, OCLC's intent to monopolize the ILS market is clear. Because OCLC is using its monopoly power over the WorldCat database, cataloging and ILL by (a) refusing to allow for-profit companies to have access to the WorldCat database for commercial use, (b) requiring libraries to purchase its products, (c) requiring libraries to assist in

1 product development, and (d) selective, discriminatory pricing schemes and bundling, there is a
2 dangerous probability that OCLC will obtain a monopoly in the ILS market.

3 93. A not insubstantial amount of interstate commerce in the ILS market has been—
4 and continues to be—affected by OCLC's illegal conduct, and OCLC's conduct has harmed
5 libraries, their customers and consumers and has harmed competition.

6 94. As a result of OCLC's violations of Section 2 of the Sherman Act 15 U.S.C. § 2,
7 Innovative has been injured and continues to be injured in its business and property in an amount
8 to be determined at trial, which amount is to be trebled in accordance with 15 U.S.C. § 15.

9 95. As a result of OCLC's conduct and actions in violation of Section 2 of the
10 Sherman Act, Innovative has suffered and will continue to suffer irreparable harm unless OCLC
11 is restrained and enjoined from continuing its wrongful actions intended to destroy Innovative's
12 business reputation and goodwill and unless this Court orders defendant OCLC to provide access
13 to the WorldCat database to Innovative and other competitors, on such terms as are just and
14 reasonable.

15 **THIRD CLAIM FOR RELIEF**

16 **(Violation of Section 1 of the Sherman Act for 17 Unlawful Exclusionary Agreements)**

18 96. Plaintiffs SkyRiver and Innovative incorporate by this reference each and every
19 allegation of paragraphs 1-78, 80-85 and 89-93 above.

20 97. Defendant OCLC has monopoly power in the bibliographic data market, the
21 cataloging service market and the ILL market.

22 98. Plaintiffs are informed and believe and based thereon allege that defendant OCLC
23 has entered into and enforces agreements, policies and guidelines with its member libraries that
24 unreasonably restrain trade as described herein by among other things:

25 (a) excluding or refusing to deal with plaintiffs by denying them access to the
26 WorldCat database for commercial use;

27 (b) excluding plaintiffs from having access to the bibliographic data of its
28 member libraries' holdings for commercial use;

(c) requiring its members to deal exclusively or predominately with OCLC for

1 library services and products;

2 (d) requiring members to assist OCLC in developing products and excluding
3 for-profit firms from similar access;

4 (e) offering products free to eliminate plaintiffs as competitors; and

5 (f) bundling or tying products or services with its monopoly products and
6 services.

7 99. A not insubstantial amount of interstate commerce in the bibliographic data
8 market, cataloging service market, ILL service market, and ILS market has been—and continues
9 to be—affected by OCLC's illegal conduct, and OCLC's conduct has harmed libraries, their
10 customers and consumers and has harmed competition.

11 100. As a result of OCLC's violations of Section 1 of the Sherman Act, 15 U.S.C. § 1,
12 plaintiffs have been injured and continue to be injured in their business and property in an amount
13 to be determined at trial, which amount is to be trebled in accordance with 15 U.S.C. § 15.

14 101. As a result of OCLC's conduct and actions in violation of Section 1 of the
15 Sherman Act, plaintiffs have suffered and will continue to suffer irreparable harm unless OCLC is
16 restrained and enjoined from continuing its wrongful actions intended to destroy plaintiffs'
17 business reputation and goodwill and unless this Court orders defendant OCLC to provide access
18 to the WorldCat database to plaintiffs and other potential competitors for commercial use, on such
19 terms as are just and reasonable.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Violation of Section 1 of the Sherman Act for Unlawful Tying Arrangements)**

22 102. Plaintiff SkyRiver incorporates by this reference each and every allegation of
23 paragraphs 1-78, 80-85, 89-93 and 97-98 above.

24 103. Defendant OCLC has monopoly power in the bibliographic data market, the
25 cataloging service market and the ILL market.

26 104. Plaintiff SkyRiver is informed and believes and based thereon alleges that OCLC
27 has entered into and enforces agreements, policies and guidelines with its member libraries that
28 unreasonably restrain trade in the bibliographic data, cataloging, and ILL markets. OCLC has

1 willfully attempted to exclude SkyRiver from the bibliographic database and cataloging markets,
2 which are essential to enter the ILL market.

3 105. OCLC's cataloging service and ILL service are separate services. Their functions
4 are different, and there are different markets or demands by libraries for these services.

5 106. SkyRiver is informed and believes and based thereon alleges that OCLC treats
6 cataloging and ILL as separate services and prices them separately.

7 107. To coerce libraries to use OCLC's cataloging service and not to use SkyRiver's
8 cataloging service, OCLC unreasonably increased the price of full participation in its ILL service
9 and/or uploading charges for libraries using SkyRiver's cataloging service to contribute new
10 acquisitions to the WorldCat database. The prices charged by OCLC to upload records by
11 libraries that did not agree to use OCLC's cataloging service are punitive and are intended to
12 exclude SkyRiver as a competitor for cataloging services. There is no efficiency or business
13 justification for OCLC's actions, which amount to a *de facto* tying arrangement.

14 108. SkyRiver is informed and believes and based thereon alleges that OCLC had a
15 practice of allowing its member libraries that subscribed to the competing RLG cataloging service
16 to batch load their acquisitions to WorldCat for a modest per-record fee of approximately \$0.23
17 so that those materials would be available for interlibrary lending among other academic libraries,
18 and that OCLC continues to extend this per-record fee to many libraries that do not use its
19 cataloging service.

20 109. OCLC effectively has used its monopoly over the WorldCat database and ILL
21 service to force libraries to subscribe to its cataloging service by charging a punitive price to ILL
22 users for uploading new holdings for the benefit of all ILL users in order to eliminate SkyRiver as
23 a competitor in the cataloging service market. As described herein, OCLC's unlawful tying of its
24 cataloging service to its ILL service and bibliographic database give a clear signal to libraries
25 considering SkyRiver's cataloging service that OCLC's ILL service and/or record uploading
26 charges will be prohibitively increased if they use SkyRiver. OCLC's punitive pricing to MSU
27 and CSULB was intended to, and did, intimidate other libraries not to use SkyRiver's cataloging
28 service or suffer increased and punitive ILL-related *de facto* fees.

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110. The purpose and effect of OCLC's tying arrangement through use of its monopoly power over ILL is to prevent libraries from terminating OCLC's cataloging service and choosing SkyRiver's lower cost cataloging service on the merits and to foreclose competing cataloging services, thereby restraining competition in the cataloging service market.

111. A not insubstantial amount of interstate commerce in the bibliographic data market, cataloging service market and ILL service market has been—and continues to be—affected by OCLC's illegal conduct, and OCLC's conduct has harmed libraries, their customers and consumers and has harmed competition.

112. As a result of OCLC's violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, SkyRiver has been injured and continues to be injured in its business and property in an amount to be determined at trial, which amount is to be trebled in accordance with 15 U.S.C. § 15.

113. As a result of OCLC's conduct and actions in violation of Section 1 of the Sherman Act, SkyRiver has suffered and will continue to suffer irreparable harm unless OCLC is restrained and enjoined from continuing its wrongful actions intended to destroy SkyRiver's business reputation and goodwill and unless this Court orders defendant OCLC to provide access to the WorldCat database to SkyRiver and other potential competitors, on such terms as are just and reasonable.

FIFTH CLAIM FOR RELIEF

(Violation of California Business & Professions Code Section 16720 and Section 16726 for Unlawful Restraints of Trade and Unlawful Tying Arrangements)

114. Plaintiffs SkyRiver and Innovative incorporate by this reference each and every allegation of paragraphs 1-78 and 97-101 above.

115. Defendant OCLC has monopoly power in the bibliographic data market, the library cataloging service market and the ILL market.

116. Plaintiffs are informed and believe and based thereon allege that defendant OCLC has entered into and enforces agreements, policies and guidelines with its member libraries that unreasonably restrain trade as described herein by among other things:

(a) excluding or refusing to deal with plaintiffs by denying them access to the

1 WorldCat database for commercial use;

2 (b) excluding plaintiffs from having access to the bibliographic data of its
3 member libraries' holdings for commercial use;

4 (c) requiring its members to deal exclusively or predominately with OCLC for
5 library services and products;

6 (d) requiring members to assist OCLC in developing products and excluding
7 for-profit firms from similar access;

8 (e) offering products free to eliminate plaintiffs as competitors; and

9 (f) bundling products or services with its monopoly products and services.

10 117. Plaintiffs are informed and believe and based thereon allege that OCLC is using its
11 monopoly power in the bibliographic data, cataloging and ILL service markets obtained through
12 exclusionary agreements, policies and guidelines with its member libraries as leverage to exclude
13 SkyRiver from the bibliographic data, cataloging and ILL service markets, and to eliminate
14 Innovative and other competitors from the ILS market.

15 118. OCLC's cataloging service and ILL service are separate services. Their functions
16 are different, and there are different markets or demands by libraries for these services.

17 119. Plaintiffs are informed and believe and based thereon allege that OCLC treats
18 cataloging and interlibrary lending as separate services and prices them separately.

19 120. To coerce libraries to use OCLC's cataloging service and not to use SkyRiver's
20 cataloging service OCLC unreasonably increased the price of ILL service and/or uploading
21 charges for libraries using SkyRiver's cataloging service to contribute new acquisitions to the
22 WorldCat database in order to make full use, and have the full benefit of, OCLC's ILL. The
23 prices charged by OCLC to upload records by libraries that did not agree to use OCLC's
24 cataloging service are punitive and intended to exclude SkyRiver as a competitor for cataloging
25 services. There is no efficiency or business justification for OCLC's actions.

26 121. Plaintiffs are informed and believe and based thereon allege that OCLC had a
27 practice of allowing its member libraries that subscribed to the competing RLG cataloging service
28 to batch load their acquisitions to WorldCat for a modest per-record fee of approximately \$0.23

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1 so that those materials would be available for interlibrary lending among other academic libraries.

2 122. OCLC effectively has used its monopoly over its database and ILL service to force
3 libraries to subscribe to its cataloging service by charging a punitive price to ILL users for
4 uploading new holdings for the benefit of all ILL users in order to eliminate SkyRiver as a
5 competitor in the cataloging service market. As described herein, OCLC's unlawful tying of its
6 cataloging service to its ILL service and bibliographic database give a clear signal to libraries
7 considering SkyRiver's cataloging service that OCLC's ILL service and/or record uploading
8 charges will be prohibitively increased if they use SkyRiver. OCLC's punitive pricing to MSU
9 and CSULB was intended to, and did, intimidate other libraries not to use SkyRiver's cataloging
10 service or suffer increased and punitive ILL-related fees.

11 123. OCLC is using its monopoly of the WorldCat database by offering its WorldCat
12 Local "quick start" service for free to any library that subscribes to its other products, such as
13 FirstSearch, in order to take over the ILS market from existing for-profit competitors by denying
14 competitors access to the WorldCat database.

15 124. The purpose and effect of OCLC's tying arrangement and use of its monopoly
16 power over ILL is to prevent libraries from choosing between OCLC's cataloging service and
17 SkyRiver's lower cost cataloging service on the merits and to foreclose competing cataloging
18 services, thereby restraining competition in the cataloging service market.

19 125. A not insubstantial amount of intrastate and interstate commerce in the
20 bibliographic data market, cataloging service market and ILL service market has been—and
21 continues to be—affected by OCLC's illegal conduct, and OCLC's conduct has harmed libraries,
22 their customers and consumers and has harmed competition.

23 126. As a result of OCLC's violations of Section 16720 and 16726 of the California
24 Business & Professions Code, plaintiffs have been injured and continue to be injured in their
25 business and property in an amount to be determined at trial, which amount is to be trebled in
26 accordance with Section 16750 of the California Business & Professions Code.

27 127. As a result of OCLC's conduct and actions in violation of Sections 16720 and
28 16726 of the California Business & Professions Code, plaintiffs have suffered and will continue

1 to suffer irreparable harm unless OCLC is restrained and enjoined from continuing its wrongful
 2 actions intended to destroy plaintiffs' business reputation and goodwill and unless this Court
 3 orders defendant OCLC to provide access to the WorldCat database to plaintiffs and other
 4 potential competitors, on such terms as are just and reasonable.

5 **SIXTH CLAIM FOR RELIEF**

6 **(Violation of California Business & Professions Code** 7 **Sections 17200 et seq. for Unfair Competition)**

8 128. Plaintiffs SkyRiver and Innovative incorporate by this reference each and every
 9 allegation of paragraphs 1-78, 80-87, 89-95, 97-101, 103-113 and 115-127 above.

10 129. Defendant OCLC's conduct as alleged herein constitutes unlawful and/or unfair
 11 acts or practices in violation of California Business & Professions Code section 17200 *et seq.*
 12 Among other acts, defendant has violated the Sherman Act (15 U.S.C. § 1 *et seq.*), the Clayton
 13 Act (15 U.S.C. § 12 *et seq.*), and the Cartwright Act (Cal. Bus. & Prof. Code § 16700 *et seq.*), by
 14 the unlawful conduct described hereinabove.

15 130. By its willful acts to exclude SkyRiver from the bibliographic data, cataloging and
 16 ILL markets and to harm Innovative and other competitors in the ILS market in violation of the
 17 federal and California antitrust laws, OCLC has engaged in unlawful and unfair business
 18 practices in violation of California Business and Professions Code section 17200, *et seq.*

19 131. As a direct and proximate result of the foregoing unlawful and unfair agreements,
 20 acts and practices of OCLC, plaintiffs have suffered and will continue to suffer irreparable harm,
 21 including but not limited to harm to their business, property, business reputation and good will.

22 132. OCLC intends to continue its wrongful actions and unless retrained and enjoined,
 23 will do so. Plaintiffs' remedy at law is inadequate to compensate plaintiffs for the harm inflicted
 24 and threatened by OCLC.

25 **PRAYER**

26 WHEREFORE, PLAINTIFFS SKYRIVER AND INNOVATIVE PRAY for judgment
 27 against defendant OCLC as follows:

28 1. For a preliminary and permanent injunction on all Claims for Relief prohibiting

1 OCLC, its officers, directors, employees, agents, and anyone acting on its behalf from:

2 (a) denying access to the WorldCat database to for-profit firms that provide
3 library services for commercial use;

4 (b) requiring member libraries to use OCLC products or services;

5 (c) requiring member libraries to assist OCLC in developing products and
6 excluding for-profit firms from similar access;

7 (d) using punitive pricing for uploading records to the WorldCat database to
8 libraries that purchase ILL but do not purchase cataloging from OCLC; and

9 (e) engaging in selective and discriminatory pricing through tying or bundling
10 arrangements.

11 2. For a preliminary and permanent injunction on all Claims for Relief ordering
12 OCLC to:

13 (a) provide access to the WorldCat database to for-profit firms that provide
14 library services on terms that are just and reasonable; and

15 (b) disclose the criteria on which it bases its fees for cataloging, ILL and ILS
16 services to libraries using those services.

17 3. For treble damages in an amount to be determined at trial on the First, Second,
18 Third, Fourth and Fifth Claims for Relief.

19 5. For attorneys' fees and costs incurred in this action.

20 6. For such other and further relief as the Court deems just and proper.

21 DATED: July 28, 2010

SHARTSIS FRIESE LLP

22
23 By: 
24 ARTHUR J. SHARTSIS

25 Attorneys for Plaintiff
26 INNOVATIVE INTERFACES, INC.
27
28

DEMAND FOR JURY TRIAL

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs SkyRiver Technology Solutions, LLC and Innovative Interfaces, Inc. hereby demand a trial by jury on all issues triable by a jury.

DATED: July 28, 2010

SHARTSIS FRIESE LLP

By: 
ARTHUR J. SHARTSIS

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